

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated February 21, 2019 where the ministry determined that the appellant was not eligible for requested repairs to his scooter as the request does not meet the legislated requirements set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, section 3 and 3.4.

PART D – RELEVANT LEGISLATION

Employment and Assistance for People with Disabilities Regulation, Schedule C, section 3 and 3.4.

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration:

The appellant has Persons with Disabilities designation who in May of 2018 was provided funding for the purchase of a conventional scooter for \$3,500, the maximum allowed by the legislation. The appellant had provided a quote for a \$5,099 bariatric scooter to allow for his body weight, but the ministry found that the appellant's body weight did not exceed the conventional scooters capacity and disallowed the request for the bariatric scooter which, in any case, carries a legislated maximum of \$4,500.

On December 12, 2018 the appellant submitted a quote for scooter repairs in the amount of \$85.21 covering new armpads and a right rubber footpad. A ministry worker spoke with individuals from the scooter provider who allege that the appellant abuses the scooter and that they refused to consider a warranty request for the requested repairs. On January 8, 2019, the ministry reviewed the request for repairs and denied the request under EAPWDR, Schedule C, section 3, subsections (4) and (6), as well as section 3.4 subsection (3)(c), noting that the scooter is still under warranty, which is a resource to access, and that the repairs would not be approved due to damage through misuse.

On February 21, 2019, the ministry reconsideration officer spoke with the scooter supplier and in the reconsideration decision notes background information provided by the supplier. They were told that the appellant was upset with being provided a scooter he felt was not appropriate for his size and that they were approached only a few months after his having received the scooter to repair the armpads which were cracking. They suspected misuse, perhaps through spilling a corrosive liquid, but replaced them anyways. With respect to the latest repair issue, the armpads now have some minor cracking which they believe is cosmetic. The right-side rubber foot pad insert is a cosmetic feature and not a safety issue. The supplier reports that the appellant originally wanted them screwed down but refused when he determined that he did not like the color of the screws.

The ministry appended to the reconsideration decision copies of a purchase authorization dated May 15, 2018 for the \$3,500 scooter together other unrelated items. The ministry also appended a quote from the scooter provider in the amount of \$85.21 for armpads and rubber floor pad noting that the floor mats have been replaced once already.

On February 1, 2019 the appellant signed a request for reconsideration noting:

-he spoke to the ministry in early December and late November and was told they would fix the scooter for a missing footpad, splitting armrest and the jumping into neutral on flat ground, which it still does. They also said this would be it and he couldn't ask for more warranty after this. Then he gets a letter saying he is denied after they said they would fix it.

-he states that he does not abuse it and thinks they don't want to honor the warranty. He has talked with other people concerning their dealings with the scooter supplier and that they reported they would not deal with this supplier. The service is terrible!

On February 21, 2019 the ministry completed its review of the Request for Reconsideration and denied the appellant's request.

Notice of Appeal

On March 6, 2019 the appellant signed a Notice of Appeal in which he states that he was told on the phone the ministry would fix the scooter, it is all warranty work.

Hearing

The panel conducted a written hearing on April 8, 2019 as requested by the applicant pursuant to section 22(3) (b) of the Employment and Assistance Act.

In accordance with section 22(4) of the Employment and Assistance Act, the panel can only admit evidence that was before the ministry at the time of reconsideration and evidence that is in support of the information and records that were before the ministry at the time of reconsideration. The panel has determined that there was no additional information outside of that available to the ministry at the time of reconsideration.

PART F -- REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's decision to deny the applicants request for scooter repairs because the request does not meet the legislated requirements set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, section 3 and 3.4 is reasonably supported by the evidence or a reasonable application of the legislation in the circumstance of the applicant.

Legislation

General health supplements

62 The minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for

- (a) a family unit in receipt of disability assistance,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is under 19 years of age, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

Health supplement for persons facing direct and imminent life-threatening health need

69. The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) a person in the family unit is eligible to receive premium assistance under the Medicare Protection Act, and
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
 - (i) paragraph (a) or (f) of section 2 (1);
 - (ii) sections 3 to 3.12, other than paragraph (a) of section 3

Schedule C

Medical equipment and devices

3

(1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister if

- (a) the supplements are provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation, and
- (b) all of the following requirements are met:
 - (i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
 - (ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
 - (iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
- (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
 - (b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.
- (3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if
- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
 - (b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.
- (4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.
- (5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if
- (a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and
 - (b) it is more economical to repair the medical equipment or device than to replace it.
- (6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

Medical equipment and devices — scooters

3.4

- (1) In this section, "**scooter**" does not include a scooter with 2 wheels.
- (2) Subject to subsection (5) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if all of the requirements set out in subsection (3) of this section are met:
- (a) a scooter;
 - (b) an upgraded component of a scooter;
 - (c) an accessory attached to a scooter.
- (3) The following are the requirements in relation to an item referred to in subsection (2) of this section:
- (a) an assessment by an occupational therapist or a physical therapist has confirmed that it is unlikely that the person for whom the scooter has been prescribed will have a medical need for a wheelchair during the 5 years following the assessment;
 - (b) the total cost of the scooter and any accessories attached to the scooter does not exceed \$3 500 or, if subsection (3.1) applies, \$4 500;
 - (c) the minister is satisfied that the item is medically essential to achieve or maintain basic mobility.
- (3.1) The maximum amount of \$4 500 under subsection (3) (b) applies if an assessment by an occupational therapist or a physical therapist has confirmed that the person for whom the scooter has been prescribed has a body weight that exceeds the weight capacity of a conventional scooter but can be accommodated by a bariatric scooter.
- (4) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years after the minister provided the item being replaced.
- (5) A scooter intended primarily for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

Ministry Position

The ministry position is that the appellant's request for scooter repairs does not meet the legislated requirement set out in the EAPWDR:

Section 69 provides that the minister may provide to a family unit any health supplement not authorized elsewhere provided generally that there is a life threatening need. The panel notes that the ministry has cited this provision under Applicable Legislation in the reconsideration decision form but do not consider the applicability in the main body of the decision. The panel considers this to be an error in constructing the form as there is no contention on the part of the applicant that he faces a life threatening need.

Schedule C, Section 3(4) and (6) provide the ministry may provide for repairs of medical equipment previously provided by the ministry, subject to a determination of whether the equipment was damaged through misuse which is specifically prohibited by section 3(6). The ministry has concluded that enough evidence exists to support the exercise of ministerial discretion in finding damage through misuse. The ministry cites discussions with the scooter provider as evidence that it is unclear how the foot rest became loose and that it is not in the normal course for armrests to be replaced in 7 months and that that a corrosive substance may be responsible as well as a report of the appellant's dissatisfaction with the ministry choice of a lower priced conventional scooter.

Schedule C, section 3.4(3)(C) provides a number of requirements to be met for scooters to be considered a health supplement as a medical equipment or device. The ministry points to 3.4 (3) (c) which is a requirement that the minister must be satisfied that the item is medically essential to achieve or maintain basic stability and asserts the evidence indicates that these repairs are cosmetic rather than medically necessary repairs. The panel notes here that this section is likely more relevant to a purchase decision and is not really crucial to the decision here which is fully contained under Section 3(4) and (6) which deals specifically with repairs.

Appellant Position

The appellant's position is that he does not abuse the scooter and cites conversations with others to suggest the supplier does not want to honor the warranty and therefore provides poor service. The appellant further asserts he was told the ministry would fix the scooter and then sent a letter saying he was denied. Finally, he asserts this is a warranty issue.

Panel Decision

The issue under appeal is the ministry decision to deny the appellant's request for scooter repairs citing the request did not meet legislated requirements.

Under EAPDWR Schedule C, Section 3 subsection (4) and (6) the ministry has argued that while a request for repairs of medical equipment previously supplied by the ministry may be provided, there is a specific prohibition of repairs required as a result of misuse. The ministry has supported the contention that sufficient evidence of misuse exists with reports of discussions with the supplier where it was noted: the appellants unhappiness and frustration with not receiving approval for his scooter of choice; where the need for replacing arm pads twice in 7 months is considered unlikely; evidence of possible corrosive damage to the arm pads suggests misuse: missing foot pad is not considered a safety concern but rather is cosmetic and the appellant originally wanted the foot pads screwed down but refused due to screw color. This evidence achieved through the ministry due diligence convinces the panel that the ministry reconsideration decision was a reasonable application of the legislation. The panel also notes that the appellant, who asserts that this is a warranty matter may have been somewhat confused as to the role of the ministry, but he offers no evidence that refutes the ministry evidence.

Conclusion

The panel confirms the ministry reconsideration decision as it was a reasonable application of the legislation. The appellant is not successful on appeal.

APPEAL NUMBER 2019-00077

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister
for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Keith Lacroix

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

April 8, 2019

PRINT NAME

Charles Schellinck

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

April 8, 2019

PRINT NAME

Carlos Garcia

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

April 8, 2018